

REID E. MOTLEY

IBLA 78-650

Decided October 29, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, dated August 25, 1978, denying a petition to reinstate an oil and gas lease, which had terminated by operation of law for failure to timely pay the annual rental. U-37566.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Reinstatement: Generally -- Words and Phrases

"Reasonable Diligence." Allowing 1 day for mail delivery of an oil and gas lease rental demonstrates a lack of reasonable diligence, because reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to allow for normal delays in the collection, transmittal, and delivery of the payment.

2. Gas Leases: Reinstatement -- Reinstatement: Generally -- Words and Phrases

"Justifiable." For a delay in submission of an oil and gas lease rental payment to be justifiable, lessee must show that the delay would not have occurred except for factors outside of his control.

3. Oil and Gas Leases -- Reinstatement -- Reinstatement: Generally -- Words and Phrases

The fact that a courtesy rental notice did not come to oil and gas lessee's attention

until 1 day prior to rental due date is not a justifiable excuse for late payment of the rental.

APPEARANCES: James P. Hayes, Esq., Meardon, Sueppel, Downer & Hayes, Iowa City, Iowa, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Reid E. Motley appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated August 28, 1978, denying his petition to reinstate an oil and gas lease, which had terminated by operation of law for failure to pay the advance annual rental on time. BLM did not receive the payment due August 1, 1978, until August 3, 1978. Under 43 CFR 3108.2-1(a), implementing 30 U.S.C. § 188(b) (1976), automatic termination occurs for leases on which there is no well capable of producing oil or gas in paying quantities if the lessee fails to pay the annual rental on or before the anniversary date of the lease.

Appellant claims that he is entitled to reinstatement of the lease under 43 CFR 3108.2-1(c), implementing 30 U.S.C. § 188(c) (1976), which permits reinstatement where failure to make payment was either justifiable or not due to lack of reasonable diligence on the part of the lessee. Appellant admits that he did not deposit the rental payment with the Postal Service until July 31, 1978, but attempts to justify his failure to mail earlier.

Appellant alleges that the delay was caused by his failure to receive earlier the BLM courtesy notice reminding him that payment would be due. He explains that after his doctor diagnosed him as hypertensive, he was advised to stay at home and rest. Because he was confined to his home, the courtesy notice, which was addressed to and arrived at his office, did not come to his attention in a timely manner. Appellant states, however, that once he realized his payment was due, he immediately transmitted his check in the proper amount to BLM.

[1, 2] We note initially that in the absence of extenuating circumstances mailing a rental payment 1 day before its due date does not constitute reasonable diligence, for reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to allow for normal delays in collection, transmittal, and delivery of payments. Nevada Western Oil Co., 30 IBLA 379 (1977). If appellant is to prevail, he must demonstrate that the delay in payment was justifiable, *i.e.*, that the delay in mailing would not have occurred except for factors outside of his control. Estate of Kenneth F. Krammes, 40 IBLA 147, 149 (1979).

[3] Appellant asserts that his failure to pay the rental on time was justifiable because the courtesy notification from BLM did not

come to his attention until around July 31, 1978 (although it apparently arrived in good time at the address stated), whereupon he promptly made the rental payment. However, even where lessees allege that no notice reached them or their agents in time, the Board has repeatedly held that an oil and gas lessee's duty to make timely payment arises from the terms of the statute and lease and does not depend on the actual receipt of a notice from BLM. Energy Reserve, 30 IBLA 11, 12 (1977). A fortiori, appellant's failure to timely pay the annual rental payment because the courtesy notice did not come to his attention in a timely manner does not constitute a justifiable reason which would authorize the Department to reinstate the lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

